

REPORT TO THE MINISTER
OF WORKS SERVICES AND TRANSPORTATION
OF
THE BOARD OF COMMISSIONERS
OF PUBLIC UTILITIES
ENQUIRY INTO
THE NEWFOUNDLAND AND LABRADOR
DUMP TRUCK INDUSTRY





NEWFOUNDLAND AND LABRADOR

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Dear Minister:

As requested by the Honourable David S. Gilbert in his letter of August 19, 1991, the Board has conducted an inquiry, including public hearings, into the provincial dump truck industry and submits herewith its report and recommendations.

The Board of Commissioners of Public Utilities

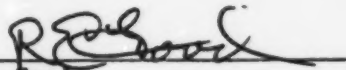
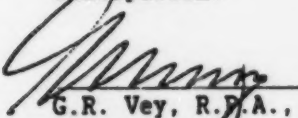
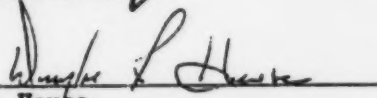

R.E. Good,
Chairperson.
G.R. Vey, R.P.A.,
Commissioner.
D. House,
Commissioner.

Table of Contents

Introduction.....	1
Review of Maritime Provinces and Quebec.....	4
Nova Scotia.....	4
New Brunswick.....	5
Prince Edward Island.....	6
Quebec.....	7
Summary of Positions.....	10
Independent Dump Truck Operators.....	10
Contractors and Newfoundland and Labrador Roadbuilders Association.....	17
Transport and Allied Workers Union Local 855.....	23
Mr. Peter Cook.....	27
Case Histories.....	32
Assessment.....	33
Recommendations.....	36
Appendix I, Terms of Reference.....	37
Appendix II, Hearing Dates and Locations.....	40
Appendix III, Dump Truck Licenses By Region.....	41
Appendix IV, Dump Truck Rates Comparison.....	42

INTRODUCTION

The operation of dump trucks in the Province of Newfoundland on a 'for hire basis' was, until April 1, 1991, regulated under the provisions of The Motor Carrier Act, RSN 1972 and regulations made thereunder. Under that Act, an application by an individual or company to operate not more than one dump truck was processed over the counter, in many cases on the same day the application was made. Other applications for operating authorities, such as general freight and specialty services were required to be published in the Newfoundland Gazette and any interested person could object and cause a hearing to be held.

On April 1, 1991, The Motor Carrier Act, 1990 was proclaimed. The new legislation removed the "over the counter" process by which dump truck licenses were previously granted and subjected dump truck applications to the same process as other applications. The new legislation also removed the Public Convenience and Necessity test, whereby the applicant had to prove a need existed for the service sought, with a reverse onus provision which required the objector to prove a case against the granting of a license before the Board could consider holding a public hearing.

For a number of years the rates have been set for this particular sector of the transportation industry as contractors, in many cases, had taken advantage of the operators. Even today, in the atmosphere of deregulation, both in rates and services, the rates for dump trucks are still set by the Public Utilities Board.

By Order in Council No. 129-'91, published in The Newfoundland Gazette on June 28, 1991 and July 5, 1991, the Board of Commissioners of Public Utilities, (the Board) was directed as follows:

- " - The Board of Commissioners of Public Utilities shall not issue, nor reinstate any further public service freight certificates for the purpose of providing dump truck services.
- The number of dump trucks permitted on all existing public service freight certificates referred to in section 2 is frozen upon commencement of this Order.

- This Order comes into force on the date of its second publication in the Gazette."

The purpose of this direction was to 'freeze' the number of dump trucks and dump truck certificates at existing levels so that an expansion of the number of service providers could not occur. In conjunction with the Order in Council, the Board was directed by the Minister of Works Services and Transportation to undertake a comprehensive review of the dump truck industry in the Province and report their findings in early January, 1992. Terms of Reference for the review were supplied and are contained in Appendix I.

As directed by the Minister, the Board scheduled and held public hearings in seven locations throughout the province to solicit comments and information on the dump truck industry, as well as proposals on its future. The schedule of hearing dates and locations is contained in Appendix II. In addition to holding hearings, the Board contacted regulatory agencies in the Maritime Provinces as well as the Province of Quebec to ascertain the level of regulation in their dump truck industries. As well, contact was made with the Governments of these Provinces to determine what, if any, policy matters were in place regarding employment or utilization of 'for hire' dump truck operators. The results of these contacts is summarized in the report.

In accordance with the Terms of Reference, the Board ascertained the number and location of dump truck services authorized in certificates issued for intra-provincial motor carrier operations. Appendix III provides the numbers and geographic location of these certificates. At the commencement of the review process, there were 741 certificates distributed in 13 separate areas of the province with an additional 10 certificates issued to non resident motor carriers. Many of these certificates also include additional services such as general freight, temperature controlled freight and other services in addition to dump truck services. Of these certificates, 112 have not been renewed for the 1991-92 licensing year.

Section 13 of The Motor Carrier Act states:

" (1) Every certificate unless cancelled, expires on the last day of the month one year following the date on which it is expressed to take effect or from which it is renewed unless an earlier date is fixed by the Board and stated in the certificate.

(2) A certificate may be renewed upon application to the Registrar on a form prescribed by regulations and upon payment of the fees prescribed by the regulations.

(3) A person who wishes to have a certificate renewed shall apply for renewal before the expiry of his or her present certificate.

(4) In the case where an application for renewal of a certificate has not been filed on or before the date on which the certificate expires, the Registrar may refuse to renew the certificate.

(5) A certificate shall not be renewed unless the applicant has paid in full an amount due under section 18 or otherwise."

A listing of all certificate holders, for dump truck services, which have not renewed for the 1991 - 1992 licensing year is being forwarded to the Board by the Registrar of Motor Vehicles. Upon receipt, these certificates will be cancelled by the Board.

The Board has been advised by the Motor Registration Division of the Department of Works, Services and Transportation, that there are currently 936 vehicles licensed for dump truck services throughout the province. The Divisions' records indicate that 682 vehicles were licensed through the St. John's office, 88 through Grand Falls and 166 through Corner Brook.

REVIEW OF MARITIME AND QUEBEC JURISDICTIONS

In a letter dated August 28, 1991, the regulatory agencies of the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Quebec were contacted to ascertain each jurisdictions regulatory treatment of for hire dump truck operations.

In the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, the carriage of 'dump truck material'; earth, gravel, rock, sand, fill, asphalt mix or any aggregate thereof, as well as salt, snow and ice is exempted from the Provincial Motor Carrier Act. As a result any individual or company may freely enter the industry. In the Province of Quebec, however, the operation of for hire dump trucks is regulated under The Transport Act, (S.8) and is identified as a bulk material license.

While three of the four jurisdictions canvassed do not regulate the for hire dump truck industry, all have some requirements with respect to the hiring of independent dump truck operators on Government contracts or by contractors with Government contracts. With the exception of Prince Edward Island, there is a requirement that all or most of the truckers hired must live in the local area or be resident in the province. This requirement means that in these jurisdictions a Newfoundland dump truck operator would not be able to obtain work. A summary of the information obtained from each jurisdiction follows.

NOVA SCOTIA

- At least 80% of trucks employed on Government contracts shall be owned by local residents, if available and suitable.

- The rates paid shall be at least equal to the rate of pay fixed by the Minister from time to time for Department equipment. (This would seem to indicate a floor price above which a contractor may pay.)

- In the event of a dispute with respect to the rate of pay, the Minister shall determine a fair and reasonable rate.

- In the event of default in payment by a contractor to an operator, and upon substantiation of a claim against the contractor by the operator, the Minister may pay such claims out of monies owed by the Minister under the contract, and such payments will be deemed to be paid by the contractor.

- Haulage rates in the province are set by the Department of Transportation.

NEW BRUNSWICK

- Where a contract requires the use of trucks for haulage, at least two thirds of all trucks hired shall be owned by local residents, except where three or less trucks are required.

- The contractor shall provide 24 hour prior notice of any requirement for local trucks to owners.

- Trucks are hired in the following order:

- Trucks owned by residents along the road within the limits of the contract.

- Trucks owned by individuals living within a 15 km radius of the limits of the contract.

- Trucks owned by individuals living within a 20 km radius of the limits of the contract.

- To recognize that some truckers may reside in remote areas from common work places, every fifth truck hired may be from outside the radius requirements specified above.

- Membership in any organization does not help or hinder employment possibilities.

- One truck shall be hired from each owner in the manner specified before a second truck may be hired from any owner.

- Haulage rates in the province are set by the Department of Transportation.

PRINCE EDWARD ISLAND

- Truck haul on local aggregates used for roadbed or shoulder material shall be open to all truckers.

- The contractor shall set up a weigh scales at the production site, and the Department shall provide a weigher to weigh the material and issue a weigh ticket.

- Use of Tractor Semi-Trailers is restricted in that such units are not permitted to dump material in the right of way.

- Aggregate material transported by Tractor Semi-Trailer must be stockpiled. This material may only be placed on the road using two and three axle straight dump trucks. These restrictions do not apply where the contractor has provided a suitable detour around the work area satisfactory to the Department and the Traffic Engineer.

- Sand, gravel and sandstone may be transported and dumped by Tractor Semi Trailer on the roadbed only where all traffic is stopped during the unloading process or a suitable detour around the work site has been provided.

- Shoulder material may not be hauled and placed on the project by Tractor Semi Trailer. This material may be hauled and stockpiled but must be placed on the project by two and three axle straight dump trucks only.

- Hot asphalt mix shall not be hauled by Tractor Semi-Trailer from the production plant to the spreader. This special provision is intended to promote safety of the travelling public as well as those engaged in the paving operation.

- For all haulage for which Department weigh tickets are issued, the contractor shall permit any person, partnership or corporation to supply haulage from the production site, pit, quarry or asphalt plant to the work site and shall pay not less than the rates of haulage which may be established from time to time by the Department.

- Haulage rates in the province are set by Department of Transportation and Public Works.

QUEBEC

The Quebec legislation imposes certain restrictions on the operators of bulk material licenses to the extent that the holder must reside in the region for which the license is granted, (S.20) be the owner of a truck registered in Quebec, (S.20) as well as other minor requirements. Transfer of a license is permitted upon approval by the Commission.

- In 1929, the Fair Salary Schedule was devised by the regulating authority and was designated as the rates of pay to be followed for among others, the dump truck industry.

- A study by the province into the industry in 1965 found four major problems with the industry.

- Summertime invasion of the industry by forestry and cultivation workers.
- Hiring of drivers at the lowest cost by public works contractors.
- The non-application of the Fair Salary Schedule and the development of a black market labour force.
- Use of strategies to circumvent the application of the Fair Salary Schedule.

At the time of the study, a 75/25 hiring clause was added to government contracts for road work as trucking of rock, sand and gravel had been dominated by contractors performing work for the highways department.

- In the case of large contracts, the government stipulated that three quarters of the trucking expenditures be given to the residents of the area in which the work was being carried out. As a result of this policy, residents purchased vehicles which were of no use once the local projects were completed as they could not move to other regions. The result was a surplus of vehicles which obliged drivers to work at sub-standard rates.

- The study also stated that unions were not a useful instrument for resolving the problems of truck drivers because the professional truck driver was not, according to the labour code, a salaried employee. Drivers were, however, represented by associations, co-operatives and syndicates which acted more to ensure the respect of laws concerning bulk transportation than they did to negotiate contracts. Co-operatives sought to share the work among their members.

- In 1973, the legislation regulating the transportation industry in general was revised. Over the next number of years a variety of amendments to the legislation affected the operation of dump trucks, the most notable being a moratorium on the issuance of new licenses for bulk material carriage.

- From 1973 to 1983, the number of bulk material permits dropped from 14,000 to 11,500. Permits are transferable upon approval of the regulatory agency and are issued for operation in specific regions only.

- The permit freeze came into effect in 1977. Prior to this the Commission had issued permits liberally. Since then, the number of permits has constantly decreased due to the voluntary non-renewal of permits and the withdrawal of permits.

- Assignment offices were established under the 1973 legislation. The purpose of these offices was to proportion the available work to the various dump truck operators in the regions. These offices never functioned properly and as a result the legislation had to be revised to attempt to have them serve their purpose.

Assignment offices are non-profit seeking bodies which have the exclusive right to distribute contractual work stemming from highway construction and other government projects according to the 75/25 clause. These offices are the property of the member carriers of the region who elect people to represent them within the office.

- In practice the 75/25 clause is included only in contracts with the Department of Transportation and not other government departments and has been largely by-passed by municipalities. On two separate occasions, the Quebec Superior Court ruled that protectionist clauses are not permissible in municipal contracts. It was viewed by the court to be a serious constraint upon the contractors right to compete in an open market and was thus contrary to the public interest.

- The assignment offices, on average, offer between 40 and 100 days work to each of their contributing members. Due to the relative shortage of work, the offices have adopted certain procedures, such as, restricting or rejecting admission of new members, imposing a waiting period on those seeking admission, cancelling certain permits to diminish or at least prevent the increase of the number of members, imposing unjust penalties or even affecting an inequitable distribution of work.

- The Quebec market is dominated by small trucking firms, 65% of which are single vehicle operations, 12% are two trucks, 7% are three trucks, 4% have four trucks and 12% have five trucks or more.

- Municipalities must follow the rates and tariffs fixed by the transportation commission.

SUMMARY OF POSITIONS

The Board scheduled hearings during the late fall at the end of the construction season. This time was thought to be opportune for most truckers so that maximum participation and information could be obtained. Although there were more in attendance, the Board received presentations from only 16 independent dump truck operators out of 936 vehicle operators. In addition, the Board received information from two independent truckers associations as well as ten private contractors and the Newfoundland and Labrador Roadbuilders Association. For the most part, the information received throughout the Province on the dump truck industry was generally the same from each of the group perspectives, but were not always the same across groups. A summary of the positions put forth by each of the groups follows.

INDEPENDENT DUMP TRUCK OPERATORS

For the independent dump truck operators, the main points of concern were:

VEHICLE SUPPLY - Presently there is an oversupply of vehicles for the amount of work available. This has been caused by the uncontrolled issuance of Motor Carrier Certificates and plates by the Board. The result has been that the contractor hires more vehicles than are necessary to do the work. This has led to substantial delays for loading and unloading, causing truckers to experience significant periods of unproductive time for which they should be compensated. If there was a waiting time provision, contractors would not hire as many vehicles thereby reducing the occurrence of unproductive time.

NEW TECHNOLOGY - The use of newer technology such as off road vehicles and belly dump trailers has taken much of the work traditionally performed by tandem dump trucks. Generally these vehicles have captured the heavy rock work and the much easier crushed material carriage such as Class A and B leaving mostly the trucking of asphalt for the tandem dumps. The trucking of asphalt

is a time consuming process. A truck will have to line up at the plant before getting loaded. It must wait while the plant produces asphalt while actually loading. The box of the truck must be oiled so the asphalt does not stick to it and the load must be covered with a tarp for transportation. It is usually very dirty work. When the truck arrives at the paving site it must wait in line for its turn at the spreader. Once at the spreader it is not a simple dump and go operation. The truck must remain in front of the spreader for considerable periods of time discharging its load as the spreader can accommodate it. As a result, the whole process takes much more time, results in less productivity for the vehicles and nets very little in the way of pay as most, if not all, trucks employed in spreading asphalt are paid on a tonne/kilometre basis instead of hourly, therefore they are being paid only while physically moving over the highway. Reports by various truckers throughout the hearings indicated that one load of asphalt could take 4 hours or more to load and off load.

RATES ISSUES - Contractors forcing truckers to work for less than the established rates. Many truckers voiced their concerns that numerous contractors were paying below the rates and that nothing seemed to be done about it. Part of the problem was that contractors were forcing independent operators to make out their bills in such a way that it appeared that the proper rate was being paid. On the hourly basis this was easily accomplished by having the operator make out a bill for less hours than actually worked, at the proper rate. The result would be an underpayment to the trucker. On the tonne/kilometre basis, underpayment was accomplished by reducing the weights carried by vehicles and applying the proper rate. Also, extraordinary charges by the contractor against the trucker for services such as grading of roads, loading of vehicles and charging higher prices for fuel in isolated work site resulted in underpayment of rates.

In many areas, truckers indicated that they have lodged complaints concerning underpayment with the appropriate authorities but nothing seems to be done about it. The indication was that usually all the trucker ends up with for complaining is the loss of his job and being blacklisted by the contractor.

Coupled with the preceding problem was also the issue of truckers working for less than the established rate. Indications were that there were two types of truckers involved in this particular issue, those who did so because they could and those who did so because they had to. The first type was generally the individual not dependent on the dump truck industry for their sole source of income and who could work for less than the rate. The second type were those who, if they did not work below the rate, stood to lose everything to the bank, as one trucker indicated, "I done it (a job) for \$ 13,000.00, a \$ 28,000.00 job, because either that or I had to lose my home, pick-up, big truck, everything I had."

In addition to the rates matters, one trucker indicated that some contractors delay payments. This causes unnecessary hardship as the trucker relies on his cheque to make payments on his truck as well as repairs and other expenses. In addition, contractors sometimes do not provide a breakdown of the payment with the cheque. The trucker often finds it difficult to reconcile his records, if any, with the payment received. As a result, the trucker does not know if he is being properly paid or under paid.

REGULATORY ENFORCEMENT - A prime area of concern was the lack of enforcement of the regulations, especially rate matters, and the low level of fines for those found guilty of paying less than the established rates. One case cited in this matter was in the Grand Falls area. An investigation showed that the contractor in fact paid less than the proper rates to numerous truckers. The truckers pled guilty to working below the established rates and were fined. The contractor, when charged in connection with the same incident, pled not guilty and after trial was acquitted. Many of the operators felt that the enforcement system has simply let them down. Other participants in the hearing indicated that the level of fines existing previous to the current legislation and even now, were an insufficient deterrent to contractors to prevent them from underpaying the rate. A contractor who can underpay 15 dump truck operators by \$2,000.00 each over the course of a project would not be adversely affected by a fine in the range of \$500.00 to \$2,500.00. As one participant said, "In some cases \$5,000.00 is only a joke to the major contractor." One participant suggested that Government institute some form of penalty in the contract to

the effect that any contractor found guilty of paying less than the established rate would be prohibited from bidding on any Government work for a number of years. The feeling was, if the fine was not a sufficient deterrent, the possibility of being put out of work would.

EMPLOYMENT PROBLEMS - Blacklisting by contractors of truckers who speak out for themselves generated a fair amount of debate. The feeling expressed by some participants was that without some form of representation by an association or union, those who speak out about contractors for whatever reason will continue to be blacklisted. The association could speak on behalf of all truckers so that no one trucker could be identified as a potential trouble maker.

Many participants suggested there should be a requirement in all Government contracts that a certain percentage of dump truck work, (75-90%) should be given to independent truckers. It was thought this would ensure adequate work for all truckers in the province and would also help to alleviate the problems of excess waiting time and underpayment of rates.

It was also stated that contractors are bidding on Government jobs at the established dump truck rates and are then using their own equipment to perform all of the dump truck work. This results in the independent operator being frozen out on some contracts. The requirement to hire a certain percentage of independents would alleviate both this and the preceding problem and would not cost Government additional money as they are paying the full rates anyway.

The issue of 'moonlighters' was raised on two occasions. The indication was that there are a high number of moonlighters in the industry who are working to the detriment of full time independent operators. These are people who own a dump truck but work full time teaching or fishing or in other fields. They do not rely on the operation of their truck for their living and as a result can operate for rates less than required by those attempting to earn a living in the industry.

DUMP TRUCK LICENSES - The issuance of dump truck licenses and plates should be frozen until such time as the industry stabilizes. Many presenters stated that the root of the problems currently being experienced was the abundance of licenses and vehicles. The extension of the current freeze will prevent others from making the unwise investment in a dump truck and keep them out of a faltering market. A way to reduce the numbers of vehicles to a satisfactory level was not proposed. It was anticipated that natural attrition as people leave the industry willingly, by retirement or by bankruptcy will solve this problem over time.

EXEMPTIONS FROM REGULATION - It was felt by many presenters that Municipal Governments should not enjoy an exemption from the provisions of the Motor Carrier Act. If Municipal Governments are exempt why then are Provincial Government contracts not. An exemption is provided for work performed for, on behalf of, or in accordance with a franchise or license granted by a Municipal Government. With the exemption, the Municipal Government is not bound to pay the established rate. This issue exists during the winter months when a significant amount of snow removal work is performed by dump trucks and during the summer when municipal road work and other type construction work is performed.

DE-REGULATION - The possibility of de-regulation of the dump truck industry at the present time would be disastrous for many truckers. De-regulation at this time without a certified union or representative association to look after the truckers concerns would be detrimental. Presenters cited the fact that current problems with underpayment would only escalate and blacklisting by contractors of truckers would expand. De-regulation would only serve to force many current dump truck operators out of business and invite others to make an unwise investment in the industry.

Non-residents should not be permitted to enter the market. Barriers, or perceived barriers to the ability of Newfoundland truckers to migrate to other jurisdictions to work was one reason cited. Another was the current state of the industry, if the industry was opened up to non-residents it was felt that it would only serve to make an already bad situation worse.

SUBSIDIZATION - The issue of subsidization of vehicles was introduced on the Northern Peninsula. Participants inquired why dump truck operators could not be subsidized as are boats for fishermen and logging trucks hauling pulp wood to the mills. This was the only area of the province where this issue was raised.

THE UNION - At the hearing in Port Au Choix, truckers complained that while they were members of the dump truck association managed by the Teamsters Union, they were unable to obtain work in Corner Brook during the summer. In fact, one of the participants had been employed by Lundrigans in Corner Brook, but under pressure from the Corner Brook truckers he was forced out. He indicated that the union did not intervene even though the union had made arrangements with Lundrigans to have only union trucks work on the project. The perception given by those present was that even though they members of the union, they were not getting much out of it.

In answering a question regarding the hiring of only union trucks, the representative of Lundrigans initially stated that to his knowledge, this was not the case. He indicated that the work they had performed in Corner Brook this year was done by union trucks. He further went on to say, "We have to operate in an environment that causes us the least trouble to get our work done. If that means several accommodations, then we do it. Whatever it takes to survive." However during the course of the hearing it was learned that in fact Lundrigans had agreed with the union to hire only trucks in the union.

One trucker stated that he simply did not have a choice, if he wanted to work, he had to join the union. The trucker indicated that he had worked for Lundrigans for 13 years, however, when he tried to get work this past summer he was told that if he was not a member of the union he would not be hired. The individual joined the union and was placed number 32 on the list of trucks to be called. Other truckers also stated that they had no choice other than join the union. If they did not, they feared they would not be able to obtain employment.

REMUNERATION - Many truckers agreed with the view expressed by one presenter from Labrador City who indicated that in order to survive dump truck operators needed a minimum of 1000 hours work per year which would roughly translate into \$60,000.00. The general break down of expenses was, \$30,000.00 for truck payments, \$6,000.00 for fuel, leaving \$24,000.00 for other expenses such as maintenance, the operation of a pickup truck etc, and wages. One trucker indicated that on one job he had to replace the two front tires on his vehicle. The cost for two tires he indicated was \$2,100.00.

Many of the truckers participating in the review indicated that they never came close to making \$60,000.00 this year. One presenter in Labrador City indicated that none of the vehicle in his area made anything close to \$60,000.00. Most, if not all, earned in the area of \$30,000.00. As he indicated, at that level you are down to eating hot dogs with no weiners. Low earnings were reported in most other areas of the province that the Board held hearings.

OTHER ISSUES - Participants in the various locations had their own views on certain matters, that while applicable to the industry were not discussed everywhere. Below is a summary of these points.

WORK SHARING - The union had arranged for work sharing on the Hibernia project. It was felt by some that this was possible the best solution to the current employment problems in the industry. Others, however, did not agree as sharing the work meant no one earned enough to survive. Many were of the opinion that truckers should be hired on their record as in the past.

VEHICLES - One individual indicated that the only way to survive in the dump truck industry at this time is by having an older vehicle and doing your own repairs and maintenance. He indicated that the vehicle he was currently utilizing was 16 years old. He further indicated that over the last three years he had spent \$50,000.00 for repairs and maintenance.

A second individual indicated that his company operates a fleet of five vehicles. The ages of these vehicles range from 6 to 11 years. When asked if he would invest in new equipment he stated that he would not as it was too expensive and he would never recover his investment. He stated that he was currently keeping his vehicles going on maintenance alone.

FINANCING - It was indicated that many financial institutions will only finance a new dump truck for a maximum period of 4 years. Many truckers indicated that it simply was not possible to pay off a \$130,000.00 vehicle over such a short time span. What is done instead is the trucker buys the vehicle by mortgaging his home thereby spreading out the repayment period to 10 or 12 years.

MISCELLANEOUS EQUIPMENT - Truckers indicated that their investment in the dump truck industry is not limited to the operation of a truck. The nomadic life style of the industry, where individuals must travel far from their home for extended periods of time, requires them to own and operate a trailer for living accommodations at the work site as well as a pickup truck for running around obtaining parts for repairs to their dump truck. These additional costs are not included when the rates are set.

CONTRACTORS AND NEWFOUNDLAND AND LABRADOR ROADBUILDERS ASSOCIATION

From the perspective of the contractors and the Newfoundland and Labrador Roadbuilders Association, (NLRBA) the primary problems they feel are evident in the industry today are:

VEHICLE SUPPLY - There are simply too many vehicles vying for too little work. Changes in the provincial economy over the last number of years has resulted in many people leaving their traditional forms of employment and investing in a dump truck in the hopes of earning a living. The expenditures on road construction over the last ten years has not changed much in dollar terms. The increase in vehicle fleet available, however has meant that what money is there is spread amongst more operators thereby reducing incomes overall.

Estimates put the excess at 100% overcapacity. While the absolute number of vehicles on the road today may be slightly more than in the early to mid 80's one must look at what was going on then and has transpired now. In the early 80's there were numerous major projects under way. Roadwork was being performed in the construction of new and rebuilding of existing roads. There were a number of hydro construction projects under way which required a large number of dump trucks. Mining activity in the province was substantial. Many dump truck operators at one time transported fish and fish by-product in their vehicles as an alternate source of revenue. Today, however, by far the majority of roadwork is of the recapping type which does not involve the transportation of large volumes of material as in the past. The use of belly-dumps for the laying of Class A and B material on projects as a cost efficient operation has reduced the requirement for dump trucks. Changes to legislation preventing the transportation of fish and by-product in dump trucks and the closure of most mines in the province has reduced the requirement further. The downturn in major industry sectors such as the fishery, mining, logging and other resource based sections, in conjunction with the announcement of the Roads for Rails Agreement in 1988 led many to think a good living could be made, if one owned a dump truck. Many people with this belief purchased a vehicle by financing it, borrowing against equity in their homes or other means only to discover that the benefits they thought were there simply would not be realized.

In a written submission, one contractor summed up the industry in this way. 'The dump truck industry should not be made a job of last resort, nor should one be able to buy a job by purchasing a dump truck. Both these scenarios apply today and this has held back investment in this industry. This policy has led to the average age of dump trucks being five or more years older than other class eight trucks operated on the provinces highways today. The present regulatory frame work has led to the dump truck industry being a dumping ground for used equipment, purchased by people who are led to believe that by buying a dump truck they have a right to work on publicly funded contracts. No industry can attract investment or operate equipment safely with this kind of foundation.'

The hiring of too many trucks on construction projects is not necessarily the contractors fault. When a contractor obtains a project in a particular area he will usually hire only those trucks required to reasonably complete the job. It is rather hard, however, when a contractor requires only ten trucks and forty or fifty show up on the job site. Contractors are faced with a problem. If they hire only the number required they may face action from those not hired by way of pit blockades or other action. In Gambo two to three years ago there were problems with the dump truck operation. The contractor on the project suffered the loss of one of its off road vehicle to fire under questionable circumstances. More recently, this past summer a similar incident occurred on the Argentinia highway project. On the other hand, if the contractor hires all truckers presenting themselves for employment he is accused of having too many vehicles on the job which gives rise to excessive waiting time and low earnings. In essence, the contractor is placed in a no win situation simply because there is an oversupply of vehicles and an undersupply of work.

INDUSTRY DE-REGULATION - In general, the consensus of the contractors was that regulation of the dump truck industry was necessary at this time, due to the severity of the problems being experienced. Two participants, however, expressed the view that the construction industry in general is not regulated, why then should dump truck operations be regulated. Dump truck operators do not operate for the general public for the majority of their work as other freight carriers do. They are employed almost exclusively in the road construction industry. The natural progress if dump trucks are to be regulated is to regulate other heavy equipment rates and hiring practices. This would be counter productive and costly for both the contractor and Government. It was felt that the best determinant of the supply of trucks should be natural market forces.

In the brief presented by the NLRBA they indicate that the construction industry in general is a market forces driven, free enterprise industry where regulation is frowned upon. They recognize, however, that there is a degree of comfort and security felt by truckers as it relates to fixed tonne/kilometre rates. For this reason they indicate that they are prepared to recognize and

support the continuation of regulated tonne/kilometre rates but that the hourly rates should be de-regulated. In addition, the Association stated that it supports the capping on the issuance of new certificates for dump truck services until such time as it can be clearly shown that new capacity is required.

RATES ISSUES - The hourly rates prescribed by The Board for dump trucks unduly handicap the trucker. In order to haul the maximum legal load, truckers have been licensing their vehicles for sometimes artificially high gross vehicle weights. This strategy often means that their hourly rates are uncompetitively high. In many cases this causes the normally 'lean and mean' independent to be costlier than a similar contractor operated unit. The Association feels such rates should be de-regulated and the economic market forces allowed to prevail and establish the rates. De-regulation of the hourly rate will increase the amount of work available for independents as contractors would be more willing to hire, than utilize their own vehicles.

Three possibilities for hourly rates were suggested by a number of participants. The first was total de-regulation of the rate and allow the contractor and trucker to negotiate. The second, establish one single hourly rate for all vehicles. The third, establish a floor and ceiling price such that a contractor and trucker could have flexibility to negotiate a rate within the range.

Current Tonne/Kilometre rates for rock and granular material are reasonable, however, the rates for asphalt could be increased by 10%. This increase is warranted by the additional time element inherent in the laying of asphalt.

Stand by and waiting time should not be introduced as the cost will simply be passed on to government in the tender prices and ultimately to the taxpayer. The causes of waiting time vary, however, a contractor does not intentionally cause waiting time. Such factors as weather, equipment failure, project progression all contribute to the problem. The contractors prime concern is to complete the job as quickly as possible as down time costs the contractor money. One of the prime causes of waiting time, of course, is the large number of vehicles operating on the project.

The reasons for this were discussed earlier.

One of the contractors indicated that there can be no equivalency standard between cubic measurement rates and gross vehicle weight rates. The reason given was that the larger sized vehicles may not be able to carry a full load on a cubic basis depending on the density of the material hauled.

ENFORCEMENT - There should be a fast and efficient system in place whereby truckers can report non-compliance with the rates without fear of reprisals from contractors.

CONTRACTOR PROVIDED EQUIPMENT - Contractors should not be prevented, by regulations, from utilizing their own equipment on any project. Contractors generally operate a small fleet of vehicles and rely heavily on the independent dump truck operators for the majority of their carrying requirements. To institute regulations restricting contractors from utilizing their own equipment would be counter productive, increase overall costs and restrict the contractors competitiveness.

NEW TECHNOLOGY - The use of newer more efficient technology should not be prevented. The costs savings from advances in technology allow contractors to perform work today at prices which prevailed a number of years ago. Technological advances cannot be ignored and should not be legislated out. Advances in equipment over the years has resulted, in some cases, in the replacement of a number of pieces of equipment with just one because of its versatility. Technological improvements result in productivity improvements causing cost efficiencies unheard of before. The 'regulating out' of belly dump trailers will cause cost inefficiencies to continue and will result in higher construction costs.

A belly dump has approximately a two to one efficiency rate over tandem dumps. The vehicle can carry twice the legal payload of a tandem dump at approximately the same operating cost. It can spread its load as it moves reducing the grading time. It saves time as one vehicle can follow directly behind the other in the spreading operation, unlike a tandem dump which leaves a mound of material which must be graded and shaped before the next load can

be dropped. Finally, the tractor can be detached and used to pull other types of equipment such as lowbed, construction and other trailers.

INDUSTRY ECONOMICS - Financial difficulty is not limited to the independent dump trucker. No one forced any individual to purchase a dump truck as no one forced any company or individual to become a contractor. Contractors are also finding it financially difficult. A person who makes an unwise investment has no one to blame but themselves and no one but themselves can be responsible. To shift the financial burden of the dump truck industry by requiring the hiring of a certain percentage of independent dump trucks on projects is not a reasonable solution to the problem. The dump truck operators have it on the line as do the contractors.

One contractors brief identified the state of the construction industry in this way. 'The heavy construction industry continues to fight poor economic times. We are all trying to survive on too little work hence, profits have fallen, companies are sold and bankruptcies continue to rise. We see continued cuts to government programs when substantial increases are required.'

Another indicated that contractors too, have surplus equipment sitting in yards waiting for work and that the dump truck operators are not the only ones adversely affected by the current problems.

NLRBA RECOMMENDATIONS

1. Facilitate the downsizing of the available fleet.
2. Additional funds be dedicated to highway and municipal infrastructure construction.
3. Facilitate the retraining of truckers.

TRANSPORT AND ALLIED WORKERS UNION, LOCAL 855

FORMATION - The Independent Dump Truck Operators Association as it is known today was originally formed in 1988 or 1989 under the name United Dump Truckers Association Inc. The Association was formed to air the concerns of dump truckers with the proper authorities. They established a policy statement and held one meeting, on December 18, 1989 with government officials and staff of the Public Utilities Board. In June 1990, The Transport and Allied Workers Union, Local 855, (the union) were approached by owner operators and asked to take over the Association as it had not successfully addressed the problems in the industry. The union indicated it currently represents approximately 80% of dump truck owner operators in the province.

Dump truck owners pay \$350.00 per year per vehicle, or \$30.00 per month for membership in the Association. Members may register more than one vehicle, however, one vehicle from each member must be employed before a second vehicle from any member can be employed. In addition to the annual fee, a site agreement at the Hibernia project required all dump truck operators employed on the project to pay 2.2% of their gross earnings to the union.

The union currently is not certified with respect to the dump truck industry. Application has been made to the Department of Labour, however, the present wording of the labour legislation in the province prevents certification.

VEHICLE SUPPLY - Presently there are too many Motor Carrier Certificates issued such that there are simply too many vehicles available for the amount of dump truck work ongoing. Dump truck operators, in many cases, have put themselves heavily in debt in order to have a job that offers little work, a lot of headaches and no security. Some were enticed into it by promises of a lot of government money going into road construction and others simply saw it as an opportunity or means to get a job.

The tools of the trade are very expensive and the risks are great. This year saw people who were in the industry for twenty years lose their trucks. Some have lost their homes.

OUTSIDE INFLUENCES - Moonlighting is currently a contentious issue. Many owner operators see scarce work going to people who are part-time and have secure incomes from other sources. The extension of the freeze will prevent the problem from recurring and decreasing the number of plates in circulation should also help.

INDUSTRY ECONOMICS - Dump truck owners have few choices, many are in dire financial situations and work is difficult to find. Everyone in the industry is pressured and watching every way to get their truck to work. This has created the situation where sometimes forty people may insist on sharing a job that requires only twenty of them.

The dump truck season is from three to five months. In that time operators must earn enough money to support their trucks and their families for twelve months.

RATES ISSUES - Transportation of asphalt involves waiting time. Trucks quite often waste hours waiting to be loaded. They are paid on a tonne/kilometre basis and sometimes transport only one or two loads per day. This leaves the operator in a deficit position as there will not be enough income to support the truck much less a salary. In such situations it is costing money to work, not paying.

On rock, the situation is not much better. Such operations involve higher maintenance expense, tires are subjected to abuse from the working conditions and heavy rock damages the dump box and shortens the life of the vehicle.

Truckers are exploited by contractors on the hourly rate by reducing on paper the number of hours worked and paying the proper rates. As a result, the trucker is underpaid in reality, while on paper everything checks out correctly.

Recently, a complaint of underpayment of truckers by a contractor resulted in the truckers being fined and the contractor walking away without penalty. This avenue of exploitation must be closed.

The hourly rate should not be de-regulated. If the independent is forced to bargain hourly rates with the contractor it will ruin them. It will not make the independent more competitive. If the rates are in place they should stay in place.

UNIONIZATION OF THE INDUSTRY - Unionization of the provincial dump truck industry will assist operators ensure they are paid in accordance with the established rates. It will help protect the trucker from reprisals from the contractors in the form of discrimination and blacklisting. The union will control the supply of manpower to the contractor thereby eliminating the possibility of reprisal.

The union has thus far, acting on behalf of association members, been successful in arranging work sharing on the Hibernia site. Vehicles hired, however, must be association members thereby eliminating any individual or company not in the association. This arrangement saw trucks rotate through the site on three week intervals so that members had an equal opportunity to partake of the benefits of that project. The union has also assisted members in financial difficulty by making representations to financial institutions with which they dealt. In some instances members were about to lose their homes and trucks, however after discussions with the financial institution the individuals were assisted and did not lose their possessions. In some cases, individuals had been blacklisted by contractors and the union was successful in having those individuals rehired. The union has had some discussion and hopes in the new year to be able to arrange with various suppliers of parts and fuel, discounts which members may take advantage of.

NEW TECHNOLOGY - The use of belly dumps in the trucking industry is a threat as they compete unfairly with the tandem dump truck. They are not subject to the same regulation as dump trucks as most are contractor owned and hauled by brokers hired out to the contractors. The present economic climate is not the optimum to introduce expensive new technology which serves to undermine the employment of those already in the industry.

Another area of unfair competition is the use of off road vehicles for work traditionally performed by tandem dumps. These vehicles are licensed for off highway activity and are not expected

to meet the safety standards of dump trucks. They operate with heavy loads and do not have tailgates. It is not uncommon to see these vehicles hauling loads on construction sites and contractors can obtain a permit to operate them on the highway.

DE-REGULATION - The industry needs more careful regulation and monitoring over the next few years to ensure its survival. It is a very important source of employment throughout the province. The Teamsters Union is interested in the preservation and promotion of the industry so that it supports all its participants well and does not benefit one to the detriment of the other.

ECONOMIC SANCTIONS - The unions position regarding economic sanctions in addition to any fine imposed for a contractor paying less than the rate was that the contractor should never be permitted to obtain another government contract

UNION RECOMMENDATIONS

1. The rates for asphalt and rock be reviewed and a rate be established which is fair to the contractor and the dump truck owner/operator.
2. All avenues of exploitation be recognized and efforts made to close them.
3. The motor carrier plate freeze be continued.
4. The industry be monitored so that it can better respond to market forces and so that owner/operators are never again caught in a difficult financial squeeze such as they are at present. Monitoring would enable a planned approach in many areas: issuance of motor carrier plates in the future, limitation of future part-timers, more accurate predictions in terms of activity in the industry and the profitability of capital investments, etc.

5. The use of belly dumps be curtailed until the industry has rebounded and when that occurs, their rates be regulated. Further to that, we suggest that all government contracts stipulate that a percentage of the work go to dump truck owner/operators.
6. Use of off highway vehicle be more restricted so they do not abuse safety laws and infringe on the dump truck industry.

PRESENTATION BY MR. PETER COOK, PROVINCIAL CARRIERS

Mr. Peter Cook of Provincial Carriers Limited made a presentation during the St. John's phase of the hearing process. His presentation was of interest to the Board as his company is both a dump truck certificate holder as well as a sub-contractor on road construction projects. Mr. Cook made a comprehensive presentation on the subject being dealt with. Below is a summary of the information obtained.

The situation is such that there has been an evolution from hauling things in wheelbarrows, then ox carts, then single axle trucks, tandem axle trucks and now trailers. This capacity has greatly increased the ability and reduced the time required to move product. Hopper dumps or bottom dump trailers (belly dump) are more efficient in placing pit run material when used in certain road or dam construction. They can carry twice the average legal load of a tandem truck thereby doubling production with a corresponding decrease in the number of pieces of equipment required. Not only is there an increase in the production, but grading and compacting equipment is better utilized and there is a requirement for less of it.

In Badger, we were hauling over a scale. We were moving 5000 tonnes of material in a ten hour shift. They put dump trucks over the same scale and in the same ten hour shift production dropped to 3000 tonnes. That is one of the reasons the contractor wants to control the type of equipment he can hire, it controls efficiency.

The legislation allowing entry into the dump truck industry upon payment of a fee and exemption of dump truck operators from any entry restrictions has resulted in an oversupply. This situation is worsened by local employment conditions where workers are lead to believe that if they buy a truck they will automatically get work on a highway project or other Government undertaking. The scenario that follows is that an individual mortgages his house or borrows money from his friends and family to make a down payment on a truck and looks to his MHA to ensure that he gets hired on any construction work done in his district. The situation climaxed in Grand Falls and Bishops Falls where two interchanges were being constructed. The resulting conflict was well publicised by the media. There were pickets and pretty close to a riot if not small scale civil disobedience.

The construction business generally has been shrinking. In 1980 there were ten mines operating in the province, today there is one. Provincial Carriers at one time had eight vehicle dedicated to the transportation of explosives, today we have one. If there is no market there is no need. We have sold the vehicles and down sized and that is what has to be done in this industry.

If you try to protect one group of truckers from the forces of the economy you are not doing them a service, or yourself or the province. You are bringing it down to the lowest common denominator, inefficiency. You are driving the capital out of the market, the people who have the capital, who want to invest, are prepared to invest, which is what will strengthen the market and built the infrastructure that will allow the province to be competitive.

As the situation presently stands, the contractor hires the type of equipment best suited to his requirements and there are natural divisions of work available between dump trucks and hopper trailers. Presently most dump trucks are operated by individuals while most hopper dumps are owned by companies. Any interference in the free market by Government in favour of dump trucks could spell bankruptcy for those who operate the trailers. They would effectively be precluded from working on any Government funded projects. It is also questionable if the policy will result in any long range economic benefit.

In 1990 Provincial had for all intents and purposes, a contract with Lundrigans to supply the trucks necessary for the road work in Badger and Grand Falls. There was work for six trucks initially which were hired from a list given by Lundrigans. When the six trucks called reported for work they were accompanied by another ten or fifteen from the area. We were given an ultimatum by the truckers that we must hire everyone or no one would go to work. In effect, what was demanded was that all the material be hauled in tandem dump trucks and the belly dumps not be utilized. For the next 30 days the number grew from fifteen to a maximum of eighty. The job was picketed and there were fifty RCMP officers and support equipment brought in. Eventually Lundrigans had to capitulate to the truckers demands. The Board was advised of the refusal of the trucks hired to go to work but it appears nothing was done. It seems that individually the authorities are very diligent, but when they get to be a group, it's mob rule.

In Port aux Basque we were contracted to provide the trucking requirements on a road contract in the area. The pit which was to be used to haul from fell within the town boundaries. Due to pressure applied by the independent operators in the area, the town council passed an Order stating that if a contractor used Provincial Carriers the council would revoke their permit to haul from the pit. The company is in the process of taking this matter to court.

I am not doing any work now, because nobody will hire me because it brings on civil disobedience. No matter how efficient I am, if the repercussions of having me on the job is picket lines they won't hire me.

We have been literally driven out of this business by civil disobedience and the sixteen people who worked for us are out. Our payroll this year is reduced by \$600,000.00 over the previous year. Now that \$600,000.00 has a 1.5% provincial labour tax that is not paid by any individual. My overhead is higher than an individuals' but my efficiencies allow me to do it.

What is happening in the dump truck industry today is that one group is trying to form a union that would exclude all other companies and individuals from working in this industry, except under their control. The Government controls entry into the trucking industry and sets the rates for dump truck operations in the province. Is the Government now going to turn over control of hiring to the Teamsters because they are able to intimidate the public through belligerent picketing of construction sites?

The Government must take firm steps to ensure that all its citizens have equal opportunity to work on any construction job within the framework of existing laws and regulations and that no one group, by public pressure or intimidation, have a preference. The Government must further take steps to stop the practise of groups blockading public and private construction sites solely to ensure that they will be hired at the expense of others equally entitled to do the work.

The dump truck industry should not be regulated. Such services are generally restricted to construction type operations and do not rely on the general public for their normal customer base. This type of service is similar to the hauling of pulpwood, fish, minerals, all of which are exempt under the Motor Carrier Act.

Withdrawal of licensing dump trucks and establishing rates would result in the industry stabilizing within two years. The industry can then grow and diversify to meet the true needs of its customers in the most effective and profitable way. The dump truck industry suffers from over regulation that has resulted in an oversupply of equipment.

The general practice in the construction industry is to call tenders with the qualified low bidder being awarded the work. There is no reason why dump trucks should be the sole exception to this practice. Without the protection of established high rates, the normal competitive forces of the marketplace would have prevailed and the transition to new methods and equipment would have evolved without the present problems.

The Act was recently changed to bring in reverse onus. The licenses now issued and in place cannot be sold or transferred making them worthless. Any one who wants to join the freight industry can do so with little trouble. There is no reason why the dump truck operators should be singled out as a separate group. My employees are as much entitled to the protection of the system as is the fellow who works for himself. My employees should not be subjected to any kind of discriminatory regulation.

There is a problem with labour legislation, Workers Compensation and so forth. As an example, for an additional \$300.00 per employee, our group plan with Canada Life will give us the full Workers Compensation package as given by the Newfoundland Workers Compensation Commission. That would cost me about \$10,000.00 in additional premiums. But I cannot avail of that so it costs me \$28,000.00 to pay Workers Compensation. That additional money could be invested in new equipment and create jobs but I am just throwing it away because of a regulation. All they have to say is that you must have a Workers Compensation type coverage and file it with the appropriate authorities.

CASE HISTORIES

As an example of the situation faced by many dump truck operators the following is a summary of two cases presented to the Board during the course of the hearings.

The first individual, from Labrador City, is a retired school teacher. Her husband is also retired with a small pension from Wabush Mines. They purchased a dump truck and obtained a license in the hopes that their son-in-law could operate the business and earn a living for himself and support his family. The vehicle cost \$130,000.00, payments on it are \$27,000.00 per year and there is currently \$26,000.00 left owing. The finance company has been looking for its payments, however, the vehicle has not been employed this year due to the lack of work in the area and in the province in general. At the time of the hearing the individual was in the process of getting the vehicle ready to ship to the island to work at the Hibernia site. It was anticipated that the vehicle could possibly make \$10,000.00 to \$14,000.00 over the three week period it would be at the site. It was going to cost approximately \$3,000.00 to \$4,000.00 to ship the truck out and back, however, as the individual indicated, it is better to make \$ 6,000.00 and offer that to the finance company than make nothing and loose the truck.

The second individual was a fisherman from the Northern Peninsula, who sold back his license to the Government and his boat for \$75,000.00. With this money he purchased three trucks with a \$25,000.00 down payments on each. One truck he kept for himself, one was for his son and the other for his son-in-law. Originally this individual purchased one vehicle. However, he indicated that repeated contact with a contractor guaranteeing him work led him to purchase the second and third vehicles. Last year, he had to sell one of the vehicles so that the bank would not foreclose on his property. The vehicle was one year old, cost \$112,000.00 new, only had 35,000 kilometres on it, and was sold for \$60,000.00. The individual turned the money over to the bank and was presented with a bill for the outstanding loan balance of \$35,000.00. The individual has an \$80,000.00 home which he owned before entering the trucking business. He currently has one vehicle, has a mortgage on his home and owes \$ 65,000.00.

ASSESSMENT

The road building industry and especially the independent dump truck operators are undergoing a very difficult period. There is a large oversupply of tandem dump trucks which will take a long time to resolve. The Board agrees with the majority of the participants that due to the severity of the problems being experienced that regulation of the dump truck industry should continue so that no additional dump trucks can operate and that rates will continue to be set by the Board.

The Board in consultation with the Registrar should review this recommendation each January and report its findings to the Honourable Minister of Works, Services and Transportation.

The rates for dump truck carriage in the Province of Newfoundland are the highest of all jurisdictions surveyed. As an example, for crushed material hauled 100 km, our rates range from 5% to 38% above. For solid rock excavation, the difference in rates, excluding Quebec, range from 12% to 40% above. For Quebec our rates are approximately 3% less. It is interesting to note that the Newfoundland rates are only slightly above those in certain regions of Quebec. A comparison of rates for various classes of material may be found in Appendix IV.

The present tonne/kilometre rates set by the Board are generally satisfactory with the exception of the carriage of asphalt which should be increased by 10% when the Board reviews its rates this spring. Some truckers felt that rates for the carriage of rock which usually requires off road carriage from the pit to the road should be increased because of the wear and tear off the highway. For the tonne/kilometre rates, a change in the current differential between the crushed material and solid rock on the first kilometre is not contemplated.

The hourly rate is not satisfactory to anyone. The Board proposes to implement changes in this schedule. Under consideration are proposals for a single hourly rate to cover all vehicles, and a rate range with upper and lower boundaries within which rates may be negotiated.

The Board will not recommend the introduction of stand-by or waiting time. The problems being experienced are a result of the oversupply of dump trucks over which the contractor has no control.

The Board will not recommend that contractors be prevented by regulation from using their own equipment or be required to use independent dump truck operators for a certain percentage of dump truck work. The Board believes this would increase costs, decrease the contractors competitiveness and restrict his efficiency.

The independent dump truck operators complained that "moonlighters" or people who do not work full time as dump truck operators are taking work that should be done by full time operators. These people have been issued certificates and are as entitled to look for work as anyone else.

A recurring theme at all the hearings was contractors paying less than the established rates by making truckers complete their invoices so that it would appear the proper amount is paid, delaying payments, not providing a breakdown of the payment or making charges to the truckers for items that the truckers do not consider fair or reasonable. Several truckers expressed fear of being refused work by contractors if they complained. These are serious problems that the Board believes have been ongoing for many years.

The Board will recommend the Department of Works, Services and Transportation insert into its contracts that if contractors or their sub-contractors are found to have taken advantage of the dump truck operators in the manner outlined above that they would be prohibited from bidding on Department of Works, Services and Transportation contracts for one year.

The financial problems facing the independent dump truck operators because of the oversupply of tandem dump trucks has forced them to seek help (in many cases very reluctantly) from the Transport and Allied Workers Union, Local 855.

The Union has controlled the dump truck work at the Hibernia site at Bull Arm and with Lundrigans Ltd and possibly others, to the exclusion of non members. Provincial Carriers Limited has been put out of the dump truck business by the picketing of independent dump truck operators at work sites where Provincial and other sub-contractors have been employed. The Board believes this cannot be allowed to continue and will recommend that Government take action to stop this conduct.

RECOMMENDATIONS

1. Order in Council No. 129-'91 freezing the number of dump trucks that can operate in the Province be kept in effect.
2. The Board continue to regulate rates as required under Section 95 of the Motor Carrier Act, 1990.
3. The Board in consultation with the Registrar shall review the above recommendations each January and report its findings to the Honourable Minister of Works, Services and Transportation.
4. The Department of Works, Services and Transportation insert in its contracts that the contractors and their sub-contractors are required to pay the rates set by the Board, make payments promptly giving a breakdown of the payments with no deductions for other than normal reasonable expenses such as the provision of fuel at cost. If the contractors and/or sub-contractors are found to have taken advantage of the dump truck operators they are prohibited from bidding on Department of Works, Services and Transportation contracts for one year.
5. Add a provision to contracts that dump trucks when required are to be hired with no regard to an operators affiliation with any group, organization or association.
6. Government take whatever action is required to stop the disruption and/or interference of the rights of contractors to carry out their contractual obligations.

APPENDIX I

TERMS OF REFERENCE

The Board of Commissioners of Public Utilities shall consider, and report upon the following elements with respect to the dump truck industry in Newfoundland and Labrador.

REGULATORY REGIME:

Regulation of the dump truck industry is meant to provide stability within the industry and safe, efficient service to the users. The regulatory options appear to be:

- . public convenience and necessity
- . reverse onus public interest test
- . fit willing and able
- . no regulation (exemption from the terms of the Motor Carrier Act, 1990)
- . capping of licenses and/or vehicles utilized for the provision of dump truck freight service
- . reverting to the old regulatory environment whereby authorities were issued automatically for applicants with one vehicle only
- . inter-provincial competition
- . extra-provincial entrance (non-resident)
- . adequacy of current regulatory enforcement.

Different regulatory regimes may, or may not, apply dependent upon the number of vehicles operated by a single carrier, or by the entire industry.

In considering the form of the regulatory regime the Board shall take notice of the regulations and other market entry barriers in Quebec, Nova Scotia, New Brunswick and Prince Edward Island; shall take notice of the transportation regulation concepts in the Maritime economic integration discussion; and shall consider the concept of interprovincial reciprocity in the recommendation for the Newfoundland and Labrador dump truck industry.

RATE SETTING:

The Board shall consider the implications of allowing the natural market forces of supply and demand to determine dump truck rates. In addition, the Board shall establish the factors and methodology to be applied should rate regulation be retained for the dump truck industry. Amongst the aspects of rate regulation the Board shall address:

- . an equivalency standard between cubic measurement and weight
- . rates for standby/waiting time
- . items that constitute deviation from regulated rates
- . appropriate penalties for deviations from regulated rates
- . reasonableness of present rate structure
- . economic sanctions by government against contractors for paying less than the regulated rates.

DEMAND FOR DUMP TRUCKS:

The Board shall consider the implications of new technology, including mobile asphalt plants, belly dumps and rock dumps on the demand for single and tandem dump trucks. The implications of anticipated project size, project scope, and self supply of dump trucks by contractors will be included. Recommendations regarding the regulatory regime should include these implications.

SUPPLY OF DUMP TRUCKS:

The Board shall document the number of operating certificates and number of vehicles by geographic area (Labrador, Northern Peninsula, West Coast, Central Avalon) of the province. The Board shall consider the ability of provincial dump trucks to operate anywhere in Newfoundland and Labrador. The Board shall consider existing competition, if any from out of province dump trucks. Recommendations regarding the regulatory regime should include these aspects.

INDUSTRY ECONOMICS:

The Board shall consider regulatory costs, taxation regime, return on equity, annual income, and recent bankruptcies amongst other factors relative to the economics of the dump truck industry.

OTHER RELEVANT FACTORS:

The Board shall report an any other relevant factors.

APPENDIX II

HEARING DATES AND LOCATIONS

The Board conducted hearings as follows:

DATE	TIME	LOCATION
October 30, 1991	1:00 P.M.	Aurora Hotel, Goose Bay
October 31, 1991	1:00 P.M.	Two Seasons Inn, Labrador City
November 4, 1991	1:00 P.M.	Random Room, Holiday Inn, Clareville
November 5, 1991	1:00 P.M.	Mary March Room, Mount Peyton Hotel, Grand Falls
November 25, 1991	9:30 A.M.	Main Ball Room, Glynmill Inn, Corner Brook
November 28, 1991	9:30 A.M.	Banquet Room, Sea Echo Motel, Port Au Choix
December 2, 1991	9:30 A.M.	Board's Hearing Room, St. John's

Additional hearing days had been originally scheduled due to the fact the number of appearances had not been known these days were not required.

APPENDIX III

LISTING OF DUMP TRUCK LICENSES BY REGION
 AREA LISTINGS OF DUMP TRUCK LICENSES

AREA #	GEOGRAPHIC DESCRIPTION	LICENSES
1	AVALON PENINSULA, WEST TO AND INCLUDING GLENVIEW	-216
2	BURIN PENINSULA, NORTH TO AND INCLUDING GOOBIES	- 29
3	BONIVISTA PENINSULA, POINTS WEST OF GOOBIES TO AND INCLUDING GAMBO	- 68
4	CENTRAL, POINTS WEST OF GAMBO TO AND INCLUDING BUCHANS	- 92
5	BAIE VERTE, POINTS WEST OF BUCHANS TO AND INCLUDING HOWLEY	- 46
6	NORTHERN PENINSULA, EXCLUDING DEER LAKE	- 69
7	CORNER BROOK, POINTS WEST OF HOWLEY TO AND INCLUDING ST. GEORGE'S	- 98
8	PORT AU PORT PENINSULA, POINTS WEST OF ST GEORGE'S TO AND INCLUDING RIVER BROOK	- 36
9	WEST, CODROY VALLEY WEST TO PORT AUX BASQUE	- 24
10	BAY D'ESPOIR AND BURGEO	- 06
11	RED BAY ROUTE 510	- 15
12	HAPPY VALLEY / GOOSE BAY	- 06
13	LABRADOR CITY / WABUSH	- 26
14	NON RESIDENT LICENSE HOLDERS	- 10

APPENDIX IV

COMPARISON OF DUMP TRUCK RATES, TONNE/KILOMETRE
FOR EARTH, SAND, GRAVEL AND SIMILAR CRUSHED MATERIAL.
ATLANTIC PROVINCES AND QUEBEC

KM	NF*	NS	NB	PEI	PQ
1	0.886	0.84	0.78	1.07	0.824
5	1.523	1.47	1.38	1.39	1.416
10	2.318	2.26	2.08	2.10	2.156
15	3.114	3.03	2.78	2.80	2.896
20	3.853	3.80	3.48	3.51	3.636
25	4.592	4.60	4.18	4.22	4.376
30	5.331	5.37	4.87	4.50	5.116
35	5.946	6.02	5.47	4.80	5.621
40	6.562	6.57	6.02	5.11	6.126
45	7.177	6.64	6.52	5.40	6.631
50	7.690	6.69	6.97	5.70	7.136
55	8.202	6.76	7.42	5.98	7.641
60	8.715	7.08	7.82	6.27	8.146
65	9.142	7.39	8.22	6.55	8.651
70	9.569	7.71	8.57	6.84	9.026
75	9.996	8.01	8.92	7.13	9.401
80	10.422	8.33	9.27	7.40	9.776
85	10.778	8.62	9.62	7.70	10.151
90	11.134	8.94	9.97	7.99	10.526
95	11.489	9.24	10.32	8.29	10.901
100	11.845	9.54	10.67	8.58	11.276

Rates for Newfoundland have been rounded.

COMPARISON OF DUMP TRUCK RATES, TONNE/KILOMETRE
 ASPHALT
 ATLANTIC PROVINCES AND QUEBEC

KM	NF*	NS	NB	PEI	PQ
1	1.166	0.97	0.96	1.22	0.824
5	1.802	1.60	1.14	1.54	1.416
10	2.598	2.39	1.56	2.25	2.156
15	3.393	3.16	2.96	2.95	2.896
20	4.132	3.93	3.66	3.66	3.636
25	4.871	4.73	4.36	4.37	4.376
30	5.610	5.50	5.05	4.65	5.116
35	6.226	6.15	5.65	4.95	5.621
40	6.841	6.70	6.20	5.26	6.126
45	7.457	6.77	6.70	5.55	6.631
50	7.969	6.82	7.15	5.85	7.136
55	8.482	6.89	7.60	6.13	7.641
60	8.994	7.21	8.00	6.42	7.146
65	9.421	7.52	8.40	6.70	8.651
70	9.848	7.84	8.75	6.99	9.026
75	10.275	8.14	9.10	7.28	9.401
80	10.702	8.46	9.45	7.55	9.776
85	11.058	8.75	9.80	7.85	10.151
90	11.413	9.07	10.15	8.14	10.526
95	11.769	9.37	10.50	8.44	10.901
100	12.124	9.67	10.85	8.73	11.276

Rates for Newfoundland have been rounded.

COMPARISON OF DUMP TRUCK RATES, TONNE/KILOMETRE
FOR SOLID ROCK EXCAVATION
ATLANTIC PROVINCES AND QUEBEC

KM	NF*	NS	NB	PEI	PQ
1	1.021	0.924	0.78	1.07	1.108
5	1.658	1.617	1.38	1.39	1.768
10	2.453	2.486	2.08	2.10	2.593
15	3.249	3.333	2.78	2.80	3.418
20	3.988	4.180	3.48	3.51	4.243
25	4.727	5.060	4.18	4.22	5.068
30	5.466	5.907	4.87	4.50	5.893
35	6.081	6.622	5.47	4.80	6.428
40	6.697	7.227	6.02	5.11	6.963
45	7.312	7.304	6.52	5.40	7.498
50	7.825	7.359	6.97	5.70	8.033
55	8.337	7.436	7.42	5.98	8.568
60	8.850	7.788	7.82	6.27	9.103
65	9.277	8.129	8.22	6.55	9.638
70	9.704	8.481	8.57	6.84	10.033
75	10.131	8.910	8.92	7.13	10.428
80	10.557	9.163	9.27	7.40	10.823
85	10.913	9.482	9.62	7.70	11.218
90	11.269	9.834	9.97	7.99	11.613
95	11.624	10.164	10.32	8.29	12.008
100	11.980	10.494	10.67	8.58	12.403

Rates for Newfoundland have been rounded.